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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GGCC, LLC, an Illinois Limited  
Liability Company, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

DYNAMIC LEDGER SOLUTIONS,  
INC., a Delaware Corporation, TEZOS  
STIFTUNG, a Swiss Foundation,  
KATHLEEN BREITMAN, an  
Individual, and ARTHUR BREITMAN,  
an Individual,

Defendants.

Case No: 3:17-cv-06779-RS

GGCC GROUP'S CONSOLIDATED  
RESPONSE TO LEAD PLAINTIFF  
MOTIONS

Date: March 1, 2018

Time: 1:30 p.m.

Courtroom: 3 – 17<sup>th</sup> Floor

ANDREW OKUSKO, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

DYNAMIC LEDGER SOLUTIONS,  
INC., THE TEZOS FOUNDATION,  
KATHLEEN BREITMAN, ARTHUR  
BREITMAN, and TIMOTHY  
DRAPER,

Defendants.

Case No: 3:17-cv-06829-RS

**ANDREW BAKER**, individually and on behalf of all others similarly situated,

Case No. 3:17-cv-06850-RS

**Plaintiff,**

V.

**DYNAMIC LEDGER SOLUTIONS,  
INC., a Delaware corporation, TEZOS  
STIFTUNG, a Swiss Foundation,  
KATHLEEN BREITMAN, an  
Individual, ARTHUR BREITMAN, an  
Individual, JOHANN GEVERS, an  
individual, STRANGE BREW  
STRATEGIES, LLC, a California  
limited liability company, and DOES 1  
through 100 inclusive,**

Defendant.

**BRUCE MACDONALD**, Individually  
and on Behalf of All Others Similarly  
Situated,

Case No. 3:17-cv-07095-JSC

Plaintiff.

V.

**DYNAMIC LEDGER SOLUTIONS, INC., a Delaware corporation, TEZOS STIFTUNG, a Swiss Foundation, KATHLEEN BREITMAN, an Individual, ARTHUR BREITMAN, an Individual, TIMOTHY COOK DRAPER, an individual, DRAPER ASSOCIATES, JOHANN GEVERS, DIEGO PONZ, GUIDO SCHMITZKRUMMACHER, BITCOIN SUISSE AG, NIKLAS NIKOLAJSEN, and DOES 1-100, INCLUSIVE.**

## Defendants

1 **TABLE OF CONTENTS**

2	TABLE OF CONTENTS.....	i
3	TABLE OF AUTHORITIES .....	ii
4	I. THE COURT SHOULD GRANT ARMAN ANVARI'S MOTION .....	1
6	II. OTHER MOVANTS DO NOT ADEQUATELY OR TYPICALLY	
7	REPRESENT CLASS INTERESTS.....	3
8	A. Trigon Trading Pty Ltd. .....	3
9	B. Other Movants Motions Should Be Denied.....	6

## **TABLE OF AUTHORITIES**

<i>Bodri v. Gopro, Inc.</i> , 2016 WL 1718217 (N.D. Cal. Apr. 28, 2016) .....	3
<i>Borochoff v. Glaxosmithkline PLC</i> , 246 F.R.D. 201 (S.D.N.Y. 2007) .....	4
<i>Citizens Ins. Co. of Am. v. Daccach</i> , 217 S.W.3d 430 (Tex. 2007) .....	4
<i>E. Tex. Motor Freight Sys. Inc. v. Rodriguez</i> , 431 U.S. 395 (1977) .....	6
<i>Espinosa v. Ahearn</i> , Nos. 15-56014, 15-56025, 15-56059, 15-56061, 15-56064, 15-56067 2018 U.S. App. LEXIS 1626 (9th Cir. Jan. 23, 2018) .....	5
<i>Hanon v. Dataproducts Corp.</i> , 976 F.2d 497 (9th Cir. 1992) .....	1
<i>Hernandez v. Cty. of Monterey</i> , 305 F.R.D. 132 (N.D. Cal. 2015) .....	1
<i>In re Cavanaugh</i> , 306 F.3d 726 (9th Cir. 2002) .....	1, 3
<i>In re DaimlerChrysler AG Sec. Litig.</i> , 216 F.R.D. 291 (D. Del. 2003) .....	5
<i>In re Dynamic Random Access Memory Antitrust Litig.</i> , 2013 U.S. Dist. LEXIS 188116 (N.D. Cal. Jan. 7, 2013) .....	5
<i>In re Lidoderm Antitrust Litig.</i> , 2017 U.S. Dist. LEXIS 24097 (N.D. Cal. Feb. 21, 2017) .....	2
<i>In re Outerwall Inc.</i> , 2017 U.S. Dist. LEXIS 31570 (W.D. Wash. Mar. 6, 2017) .....	3

1	<i>In re Royal Ahold N.V. Sec. &amp; ERISA Litig.,</i> 219 F.R.D. 343 (D. Md. 2003) .....	4
2		
3	<i>In re Royal Bank of Scotland Group PLC Securities Litig.,</i> 765 F.Supp.2d 327 (S.D.N.Y. 2011).....	4
4		
5	<i>In re Smart Techs., Inc.,</i> 295 F.R.D. 50 (S.D.N.Y. 2013) .....	4
6		
7	<i>In re Surebeam Corp. Securities Litig.,</i> 2004 WL 5159061 (S.D. Cal. Jan. 5, 2004).....	3
8		
9	<i>In re Telectronics Pacing Sys.,</i> No. MDL-1057, 1996 U.S. Dist. LEXIS 11088 (S.D. Ohio Feb. 22, 1996) .....	5
10		
11	<i>Morrison v. Nat'l Austl. Bank Ltd.,</i> 561 U.S. 247 (2010) .....	4
12		
13	<i>Smilovits v. First Solar, Inc.,</i> 2012 U.S. Dist. LEXIS 102032 (D. Ariz. July 23, 2012) .....	3
14		
15	<i>Tawfils v. Allergan, Inc.,</i> 2017 U.S. Dist. LEXIS 122974 (C.D. Cal. June 26, 2017) .....	2
16		
17	<i>Willcox v. Lloyds TSB Bank, PLC,</i> 2016 U.S. Dist. LEXIS 2227 (D. Haw. Jan. 8, 2016).....	5
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## **I. THE COURT SHOULD GRANT ARMAN ANVARI'S MOTION**

Movants GGCC, LLC (“GGCC”), Pumaro, LLC (“Pumaro”), and Nick Anthony (collectively, the “GGCC Group”) respectfully file this response in support of Arman Anvari’s Motion for Appointment of Lead Plaintiff and Approval of Counsel. MacDonald Action, Dkt. # 70; GGCC Action, Dkt # 61. Having invested 250 ethereum into the Tezos ICO, Anvari has the largest losses and is the presumptive lead plaintiff. *In re Cavanaugh*, 306 F.3d 726, 732 (9th Cir. 2002) (the PSLRA “provides no occasion for comparing plaintiffs with each other on any basis other than their financial stake in the case. Once that comparison is made and the court identifies the plaintiff with the largest stake in the litigation, further inquiry must focus on that plaintiff alone and be limited to determining whether he satisfies the other statutory requirements.”).

Anvari is typical of the entire class of Tezos investors because he suffered the “same or similar injury” “from the same injurious course of conduct” and shares the same claims as the rest of the Class. *Hernandez v. Cty. of Monterey*, 305 F.R.D. 132, 159 (N.D. Cal. 2015) (discussing typicality). This is because “[t]ypicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). All Class members share claims under federal (or state) securities laws, even though they may have contributed different cryptocurrencies. Thus, Anvari is unambiguously typical of all class members.

In addition, there are no conflicts between Anvari and the rest of the putative class since they all invested in the Tezos ICO with an expectation of receiving Tezos tokens. *Hernandez*, at 160 (“class representatives are adequate if they do not have “any conflicts of interest with other class members” and if they will “prosecute the action vigorously on behalf of the class.”). Anvari “shares interests” in a right to rescission with all class members, and has no “antagonism” with any other type of

1 Tezos investor. *In re Lidoderm Antitrust Litig.*, 2017 U.S. Dist. LEXIS 24097, at \*74  
 2 (N.D. Cal. Feb. 21, 2017) (“Adequate representation depends on, among other factors,  
 3 an absence of antagonism between representatives and absentees, and a sharing of  
 4 interest.); *cf. Tawfils v. Allergan, Inc.*, 2017 U.S. Dist. LEXIS 122974, at \*26 (C.D.  
 5 Cal. June 26, 2017) (“mere speculation as to conflicts that may develop” is  
 6 insufficient).<sup>1</sup>

7 Even though Anvari himself satisfies all the elements to be appointed Lead  
 8 Plaintiff, he has adopted a “belt and suspenders” approach to adequacy. In an  
 9 abundance of caution to protect class interests, Anvari intends to include bitcoin  
 10 investor Pumaro, LLC and sub-minimum investor Nick Anthony as additional named  
 11 class representatives in a consolidated amended complaint, if the need arises. *See*  
 12 Declaration of Hung Ta in Opposition to Competing Motions for Lead Plaintiff and  
 13 Approval of Counsel (“Hung Decl.”), ¶ 6; *see also* Declaration of William R. Restis In  
 14 Support Of GGCC Group’s Consolidated Response To Lead Plaintiff Motions, ¶ 2.  
 15 This will ensure that any latent factual differences between class members cannot pose  
 16

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17 <sup>1</sup> Not all movants share Anvari’s absence of antagonism. Prior to the Court ruling on  
 18 Lead Plaintiff issues, several plaintiffs sought temporary injunctive relief freezing all  
 19 assets from the Tezos ICO. *See* Okusko Action, Dkt # 9 (motion for preliminary  
 20 injunction); MacDonald Action, Dkt # 8 (motion for TRO). As the development team  
 21 for the Tezos project is headed by defendant Andrew Breitman, and the funds from  
 22 the ICO are in the (reputed) possession of defendant Tezos Foundation, the motions  
 23 for preliminary injunctive relief threatened to starve the Tezos project of funding.  
 24 Such moves demonstrate sharp antagonism with members of the proposed class that  
 25 wish to receive their yet to be completed Tezos tokens. *In re Lidoderm*, 2017 U.S.  
 26 Dist. LEXIS 24097, at \*74 (“Adequate representation depends on . . . an absence of  
 27 antagonism between representatives and absentees”); GGCC Action, Dkt # 53-1,  
 Restis Decl., ¶ 3 (“While researching this action, I have spoken with dozens of United  
 States investors in the Tezos Initial Coin Offering (“ICO”). In addition, I have  
 reviewed hundreds of internet comments and twitter postings concerning the Tezos  
 project. Based on this investigation, it has become clear that a significant portion of  
 the proposed Class wish to see the Tezos project succeed.”).

1 a barrier to class certification. *See* GGCC Motion, Dkt # 53, at p. 8:6-7 (arguing that  
 2 “only a Lead Plaintiff group that consists of bitcoin, ethereum and sub-minimal  
 3 investors can be *assured* to satisfy the typicality requirement of Rule 23.”) (emphasis  
 4 added); *see also Bodri v. Gopro, Inc.*, 2016 WL 1718217, at \*6 (N.D. Cal. Apr. 28,  
 5 2016) (“the PSLRA does not in any way prohibit the addition of named plaintiffs to  
 6 aid the lead plaintiff in representing a class”); *In re Surebeam Corp. Securities Litig.*,  
 7 2004 WL 5159061, at \*9 (S.D. Cal. Jan. 5, 2004) (“the lead plaintiff in a securities  
 8 class action has a responsibility to identify and include named plaintiffs who have  
 9 standing to represent various potential subclasses of plaintiffs who may be  
 10 determined, at the class certification stage, to have distinct interests of claims.”).

11 **II. OTHER MOVANTS DO NOT ADEQUATELY OR TYPICALLY**  
 12 **REPRESENT CLASS INTERESTS**

13 As Anvari has demonstrated the largest losses and otherwise satisfies the  
 14 requirements of Rule 23, the Court need not consider any other movant. *In re*  
 15 *Cavanaugh*, 306 F.3d at 732 (“The court must examine potential lead plaintiffs one at  
 16 a time, starting with the one who has the greatest financial interest, and continuing in  
 17 descending order *if and only if* the presumptive lead plaintiff is found inadequate or  
 18 atypical.”) (emphasis added).

19 **A. Trigon Trading Pty Ltd.**

20 Trigon Trading Pty Ltd. (“Trigon”) does not have the largest financial losses,  
 21 and can only be considered if Anvari is *conclusively* deemed inadequate. *Smilovits v.*  
 22 *First Solar, Inc.*, 2012 U.S. Dist. LEXIS 102032, at \*16 (D. Ariz. July 23, 2012)  
 23 (holding that the PSLRA requires “proof” of inadequacy or lack of typicality because  
 24 “speculative defects are not enough to defeat the [lead plaintiff] presumption.”) (citing  
 25 cases); *In re Outerwall Inc.*, 2017 U.S. Dist. LEXIS 31570, at \*29 (W.D. Wash. Mar.  
 26 6, 2017) (“A speculative defense ‘is insufficient to rebut the presumption’ that the  
 27

1 presumptively most adequate plaintiff ‘satisfies the adequacy and typicality  
 2 requirements.””).

3 Even so, Trigon’s motion (Dkt # 55) should be denied because it is an  
 4 Australian entity. Hung Decl., Ex. A (“Current Company Extract” from the Australian  
 5 Securities and Investments Commission). As such, Trigon may have standing  
 6 problems because the Supreme Court has held that the federal securities laws cannot  
 7 be applied extraterritorially. *See Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247,  
 8 250-51 (2010); *see also In re Royal Bank of Scotland Group PLC Securities Litig.*,  
 9 765 F.Supp.2d 327,338 & n. 11 (S.D.N.Y. 2011) (“the Securities Act, like the  
 10 Exchange Act, does not have extraterritorial reach.”); *In re Smart Techs., Inc.*, 295  
 11 F.R.D. 50, 56 (S.D.N.Y. 2013) (same).

12 Trigon’s vulnerability on this issue disqualifies it from adequately representing  
 13 the class. At the least, it subjects Trigon to unique defenses not generally applicable to  
 14 the class as a whole. *Borochoff v. Glaxosmithkline PLC*, 246 F.R.D. 201, 205  
 15 (S.D.N.Y. 2007) (holding that the risk that foreign investors may be excluded from the  
 16 class because Germany may not recognize a judgment was sufficient to deny German  
 17 investors lead plaintiff status); *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 219  
 18 F.R.D. 343, 353 (D. Md. 2003) (holding that the possibility that foreign courts would  
 19 not recognize judgment was enough to deny a group of foreign parties lead plaintiff  
 20 status).

21 And even if the Court were to later determine that Trigon’s foreign citizenship  
 22 is no barrier under *Morrison* and its progeny, Trigon is still not an adequate plaintiff.  
 23 The Lead Plaintiff may ultimately seek to plead a worldwide class in a consolidated  
 24 complaint. However, the Court may determine that under the predominance,  
 25 suitability, manageability or other requirements of *Rule 23*, it is only appropriate to  
 26 certify a class of United States persons. *E.g., Citizens Ins. Co. of Am. v. Daccach*, 217  
 27 S.W.3d 430, 447-48 (Tex. 2007) (in suit by foreign plaintiffs against Texas company

1 for failure to register a security, class was decertified and remanded: “[T]he fact that  
 2 other jurisdictions are implicated by the pleadings raises an issue of adequacy of  
 3 representation.”); *In re Electronics Pacing Sys.*, No. MDL-1057, 1996 U.S. Dist.  
 4 LEXIS 11088, at \*4 (S.D. Ohio Feb. 22, 1996) (decertifying worldwide class because  
 5 judgment may not have preclusive effect in other jurisdictions) (citing cases); *In re*  
 6 *DaimlerChrysler AG Sec. Litig.*, 216 F.R.D. 291, 301 (D. Del. 2003) (excluding  
 7 foreign investors from the class due to both management concerns and concerns that  
 8 foreign courts would not recognize the judgment); *Willcox v. Lloyds TSB Bank, PLC*,  
 9 2016 U.S. Dist. LEXIS 2227, at \*25-26 (D. Haw. Jan. 8, 2016) (“The trending  
 10 approach of federal courts nationwide appears to be evaluating the *res judicata* effects  
 11 of class judgments with respect to groups of foreign plaintiffs and then excluding from  
 12 the class those whose home countries would not honor a class judgment from the  
 13 United States.”).

14 As the GGCC Group mentioned in their opening brief, the technology and law  
 15 surrounding crypto assets is new. International regulation of the subject matter is still  
 16 developing. For this reason, differences in national law may pose certification  
 17 difficulties. *See Espinosa v. Ahearn*, Nos. 15-56014, 15-56025, 15-56059, 15-56061,  
 18 15-56064, 15-56067, 2018 U.S. App. LEXIS 1626, at \*8 (9th Cir. Jan. 23, 2018) (“[A]  
 19 court must consider the impact of potentially varying state laws, because ‘[i]n a multi-  
 20 state class action, variations in state law may swamp any common issues and defeat  
 21 predominance.’ [Citations] … On the other hand, where ‘the consumer-protection  
 22 laws of the affected States vary in material ways, no common legal issues favor a  
 23 class-action approach to resolving a dispute.’”).

24 In the plausible scenario of a U.S. only class, Trigon would not even be a  
 25 member of it. *See In re Dynamic Random Access Memory Antitrust Litig.*, 2013 U.S.  
 26 Dist. LEXIS 188116, at \*183 (N.D. Cal. Jan. 7, 2013) (“A class representative must  
 27 be part of the class and ‘possess the same interest and suffer the same injury’ as

1 the class members.”) citing *E. Tex. Motor Freight Sys. Inc. v. Rodriguez*, 431 U.S.  
2 395, 403 (1977). Trigon’s motion to be appointed Lead Plaintiff should be denied.<sup>2</sup>

3 **B. Other Movants Motions Should Be Denied**

4 Like Trigon, the other movants do not have the largest financial interest in the  
5 case, and thus are not the presumptive Lead Plaintiff. *In re Cavanaugh*, 306 F.3d at  
6 732. Because they cannot rebut Anvari’s satisfaction of Rule 23, their motions should  
7 be denied.

8 Respectfully submitted,  
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Dated: February 8, 2018

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21 **ATTORNEYS FOR GGCC GROUP**

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26 <sup>2</sup> Even though Trigon’s foreign citizenship is highly material to the Court’s  
27 determination of typicality and adequacy, this fact was not disclosed in its motion. See  
Dkt ## 55-56.